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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JASON ALAN, individually and on) Case No.
behalf of all others similarly situated,)

Plaintiff,)

vs.)

AMERICAN MICROMARKETS, INC.)
dba MARKOTS,)
Defendant.)

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff Jason Alan ("Plaintiff"), individually and on behalf of all others
similarly situated, alleges the following upon information and belief based upon
personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of American Micromarkets, Inc. dba Markots (“Defendant”) in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in California. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)* because Defendant does business within the County of Los Angeles, State of California, and in the Central District of California.

PARTIES

4. Plaintiff, Jason Alan (“Plaintiff”), is a natural person residing in Reseda, California and is a “person” as defined by *47 U.S.C. § 153 (10)*.

5. Defendant, American Micromarkets, Inc. dba Markots (“Defendant”), is a business that serves growing businesses nationwide as a one-

1 stop service for said business' direct marketing needs and is a "person" as defined
2 by 47 U.S.C. § 153 (10).

3 **FACTUAL ALLEGATIONS**

4 6. At various and multiple times prior to the filing of the instant
5 Complaint, including within the one year preceding the filing of this Complaint,
6 Defendant contacted Plaintiff in an attempt to solicit and/or market Defendant's
7 services.

8 7. Beginning in and around June of 2015, Defendant contacted Plaintiff
9 on his cellular telephone in an attempt to solicit and/or market Defendant's
10 services.

11 8. Defendant was calling Plaintiff on his cellular telephone number
12 ending in -7456. Defendant called from telephone number, *inter alia*, (877)946-
13 7253.

14 9. Defendant left the following pre-recorded message on Plaintiff's
15 cellular telephone voicemail:

16 We can help you grow your brokerage business by sending out
17 postcards, letters, mailers, and listing information to business
18 owners in your area. We create the design, print, as well as provide the
19 mailing list, and do the actual mailing for you. Call Markots on 877-946-
20 7253 for more details.

21 10. Defendant utilized an "artificial or prerecorded voice" as prohibited
22 by 47 U.S.C. § 227(b)(1)(A).

23 11. Furthermore, during all relevant times, Defendant used an
24 "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)(1) to
25 place its daily calls to Plaintiff seeking to collect the debt allegedly owed.

26 12. Defendant's calls constituted calls that were not for emergency
27 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

28 13. Defendant's calls were placed to telephone number assigned to a

1 cellular telephone service for which Plaintiff incurs a charge for incoming calls
2 pursuant to 47 U.S.C. § 227(b)(1).

3 14. During all relevant times, Defendant did not have Plaintiff's "prior
4 express consent" to receive calls using an automatic telephone dialing system or
5 an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
6 227(b)(1)(A).

7 15. As a result of Defendant's conduct, Defendant violated the TCPA
8 by:

9 a) using any automatic telephone dialing system or an
10 artificial or pre-recorded voice to any telephone
11 number assigned to a paging service, cellular
12 telephone service, specialized mobile radio service,
13 or other radio common carrier service, or any service
14 for which the called party is charged for the call (47
USC §227(b)(A)(iii)).

15 16. As a result of the above violations of the TCPA, Plaintiff suffered
16 and continues to suffer injury to Plaintiff's feelings, personal humiliation,
17 embarrassment, mental anguish and emotional distress, and Defendant is liable to
18 Plaintiff for Plaintiff's actual damages, statutory damages, and costs and
19 attorney's fees.
20
21

22 **CLASS ALLEGATIONS**

23 17. Plaintiff brings this action individually and on behalf of all others
24 similarly situated, as a member of the proposed class (hereafter "The Class")
25 defined as follows:

26 All persons within the United States who received any
27 collection telephone calls from Defendant to said
28 person's cellular telephone made through the use of any

1 automatic telephone dialing system or an artificial or
2 prerecorded voice and such person had not previously
3 consented to receiving such calls within the four years
4 prior to the filing of this Complaint

5 18. Plaintiff represents, and is a member of, The Class, consisting of All
6 persons within the United States who received any collection telephone calls from
7 Defendant to said person's cellular telephone made through the use of any
8 automatic telephone dialing system or an artificial or prerecorded voice and such
9 person had not previously not provided their cellular telephone number to
10 Defendant within the four years prior to the filing of this Complaint.

11 19. Defendant, its employees and agents are excluded from The Class.
12 Plaintiff does not know the number of members in The Class, but believes the
13 Class members number in the thousands, if not more. Thus, this matter should be
14 certified as a Class Action to assist in the expeditious litigation of the matter.

15 20. The Class is so numerous that the individual joinder of all of its
16 members is impractical. While the exact number and identities of The Class
17 members are unknown to Plaintiff at this time and can only be ascertained
18 through appropriate discovery, Plaintiff is informed and believes and thereon
19 alleges that The Class includes thousands of members. Plaintiff alleges that The
20 Class members may be ascertained by the records maintained by Defendant.

21 21. Plaintiff and members of The Class were harmed by the acts of
22 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
23 and Class members via their cellular telephones thereby causing Plaintiff and
24 Class members to incur certain charges or reduced telephone time for which
25 Plaintiff and Class members had previously paid by having to retrieve or
26 administer messages left by Defendant during those illegal calls, and invading the
27 privacy of said Plaintiff and Class members.

28 22. Common questions of fact and law exist as to all members of The

1 Class which predominate over any questions affecting only individual members
2 of The Class. These common legal and factual questions, which do not vary
3 between Class members, and which may be determined without reference to the
4 individual circumstances of any Class members, include, but are not limited to,
5 the following:

- 6 a. Whether, within the four years prior to the filing of this
7 Complaint, Defendant made any collection call (other than a
8 call made for emergency purposes or made with the prior
9 express consent of the called party) to a Class member using
10 any automatic telephone dialing system or any artificial or
11 prerecorded voice to any telephone number assigned to a
12 cellular telephone service;
- 13 b. Whether Plaintiff and the Class members were damages
14 thereby, and the extent of damages for such violation; and
- 15 c. Whether Defendant should be enjoined from engaging in such
16 conduct in the future.

17 23. As a person that received numerous collection calls from Defendant
18 using an automatic telephone dialing system or an artificial or prerecorded voice,
19 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
20 typical of The Class.

21 24. Plaintiff will fairly and adequately protect the interests of the
22 members of The Class. Plaintiff has retained attorneys experienced in the
23 prosecution of class actions.

24 25. A class action is superior to other available methods of fair and
25 efficient adjudication of this controversy, since individual litigation of the claims
26 of all Class members is impracticable. Even if every Class member could afford
27 individual litigation, the court system could not. It would be unduly burdensome
28 to the courts in which individual litigation of numerous issues would proceed.

1 Individualized litigation would also present the potential for varying, inconsistent,
2 or contradictory judgments and would magnify the delay and expense to all
3 parties and to the court system resulting from multiple trials of the same complex
4 factual issues. By contrast, the conduct of this action as a class action presents
5 fewer management difficulties, conserves the resources of the parties and of the
6 court system, and protects the rights of each Class member.

7 26. The prosecution of separate actions by individual Class members
8 would create a risk of adjudications with respect to them that would, as a practical
9 matter, be dispositive of the interests of the other Class members not parties to
10 such adjudications or that would substantially impair or impede the ability of such
11 non-party Class members to protect their interests.

12 27. Defendant has acted or refused to act in respects generally applicable
13 to The Class, thereby making appropriate final and injunctive relief with regard to
14 the members of The Class as a whole.

15 **FIRST CAUSE OF ACTION**

16 **Negligent Violations of the Telephone Consumer Protection Act**

17 **47 U.S.C. §227 et seq.**

18 28. Plaintiff repeats and incorporates by reference into this cause of
19 action the allegations set forth above at Paragraphs 1-27.

20 29. The foregoing acts and omissions of Defendant constitute numerous
21 and multiple negligent violations of the TCPA, including but not limited to each
22 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

23 30. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
24 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in
25 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
26 *227(b)(3)(B).*

27 31. Plaintiff and the Class members are also entitled to and seek
28 injunctive relief prohibiting such conduct in the future.

1 **SECOND CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
3 **Act**

4 **47 U.S.C. §227 et seq.**

5 32. Plaintiff repeats and incorporates by reference into this cause of
6 action the allegations set forth above at Paragraphs 1-31.

7 33. The foregoing acts and omissions of Defendant constitute numerous
8 and multiple knowing and/or willful violations of the TCPA, including but not
9 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
10 *seq.*

11 34. As a result of Defendant's knowing and/or willful violations of *47*
12 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
13 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
14 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

15 35. Plaintiff and the Class members are also entitled to and seek
16 injunctive relief prohibiting such conduct in the future.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

19 **FIRST CAUSE OF ACTION**

20 **Negligent Violations of the Telephone Consumer Protection Act**

21 **47 U.S.C. §227 et seq.**

- 22 • As a result of Defendant's negligent violations of *47 U.S.C.*
23 *§227(b)(1)*, Plaintiff and the Class members are entitled to and
24 request \$500 in statutory damages, for each and every violation,
25 pursuant to *47 U.S.C. 227(b)(3)(B)*.
26 • Any and all other relief that the Court deems just and proper.

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SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act**

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 16th day of September, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff